

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SAP AG and SAP AMERICA, INC.,

Plaintiff,

v.

DATATERN, INC.,

Defendant.

Case No. 1:11-cv-02648 KBF

(ECF CASE)

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO FILE EXHIBITS IN
SUPPORT OF MOTION FOR SUMMARY JUDGMENT UNDER SEAL**

Pursuant to §§ 7.2, 7.3, and 14.3 of the Protective Order entered on April 23, 2012 in the above-captioned matter (“Protective Order”), Plaintiffs SAP AG and SAP America, Inc. (“SAP”) file this brief memorandum of law in support of their unopposed Motion to File Exhibits In Support of Motion for Summary Judgment Under Seal. SAP requests that the Court allow it to file under seal the following Exhibits to the Declaration of Andrew L. Perito in Support of SAP AG and SAP America, Inc.’s Motion for Summary Judgment: Exhibit A [Excerpts of the Deposition transcript of Neeraj Gupta, dated September 28, 2012; Exhibit B [Settlement Agreement between DataTern, Inc. and Allstate Insurance Company, dated December 30, 2010]; Exhibit C [Settlement Agreement between DataTern, Inc. and BP America Inc., dated March 18, 2011]; Exhibit D [Settlement Agreement between DataTern, Inc. and Buy.com, Inc., dated February 7, 2011]; Exhibit E [Settlement Agreement between DataTern, Inc., The Bank of New York Mellon Corporation, Pershing LLC, and The Goldman Sachs Group, Inc.]; Exhibit F [Settlement Agreement between DataTern, Inc. and Regions Financial Corporation, dated March 22, 2011]; Exhibit G [Settlement Agreement between DataTern, Inc. and Eli Lilly and Company, dated December 13, 2011]; Exhibit H [Settlement Agreement between DataTern, Inc. and Rubbermaid, Inc., dated December 31, 2010];

Exhibit I [Settlement Agreement between DataTern, Inc., Amphion Innovations plc, and Abbott Laboratories, dated November 11, 2011]; Exhibit J [Excerpts of the Deposition Transcript of Gregoire Cacheux, dated July 27, 2012]; Exhibit N [Excerpt of the Deposition Transcript of Gabriel Oancea, dated August 16, 2012]; and Exhibit Q [BusinessObjects Major Releases (1996-present), Exhibit 1 to the Deposition of Frank Prabel].

(1) Exhibits A, J, and N are excerpts from deposition testimony taken in this case pursuant to Rule 30 of the Federal Rules of Civil Procedure. Exhibits A and J relate to the confidential, proprietary, and internal functionality of SAP's BusinessObjects products. Exhibit N is the deposition testimony of a named inventor. These depositions transcripts, in whole or in relevant part, have been designated as Confidential or Highly Confidential — Attorneys' Eyes Only pursuant to the Protective Order by at least one of the parties.

(2) Exhibit Q was marked as Exhibit 1 to the deposition of Frank Prabel, taken in this case pursuant to Rule 30 of the Federal Rules of Civil Procedure. Exhibit Q contains confidential and proprietary information relating to the development of SAP's BusinessObjects products, and has been marked Confidential pursuant to the Protective Order by SAP.

(3) Exhibits B-I are confidential settlement agreements between DataTern, Inc. ("DataTern") and various third parties, which have been marked Highly Confidential — Attorneys' Eyes Only pursuant to the Protective Order by DataTern.

(4) As set forth in § 7.2, 7.2, and 14.3 of the Protective Order, these documents contain proprietary and confidential information which may not be filed in the public record. Specifically, each of these documents contain information that either (a) is trade secret or other confidential research, development, or commercial information; or (b) disclosure of which to the public would create a substantial risk of serious harm that could not be avoided by less restrictive means.

(5) Counsel for DataTern has indicated that it does not oppose this Motion.

(6) Pursuant to § 14.3 of the Protective Order, FRCP 5.2, the ECF Rules and the Sealed Records Filing Instructions found at http://nysd.uscourts.gov/cases_records.php?records=sealed_records, SAP will file a CD of the aforementioned Exhibits under seal if the Court allows this Motion.

CONCLUSION

For the foregoing reasons, SAP respectfully requests that the Court grant its Motion so that SAP may file the aforementioned Exhibits under seal.

Dated: October 26, 2012

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Respectfully submitted,

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